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DRAFT REPORT OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES ON ITS NINTH SESSION

Held at the Palais des Nations, Geneva,
from 23 to .. April 1990

Rapporteur: Ms. Cecilia Barrios Barón (Argentina)

CONTENTS

Chapter		Paragraphs
	Introduction	1 - 30

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INTRODUCTION

1. The Intergovernmental Group of Experts on Restrictive Business Practices held its ninth session at the Palais des Nations, Geneva, from 23 to .. April 1990.

2. In the course of its session, the Group held ... plenary meetings.

Opening statements

3. The representative of the Secretary-General of UNCTAD recalled that, in its resolution 41/167, the General Assembly had entrusted the Intergovernmental Group of Experts, at its ninth session, with acting as the preparatory body for the second United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, scheduled to take place from 26 November to 7 December 1990. That highly important task came at a time when the need for free competition to regulate supply and demand in the economy and to determine the prices of goods and services was receiving increased attention worldwide. In developed market-economy countries, price controls and regulation by the State had been gradually relaxed in favour of increased reliance on market mechanisms. In many other economies, the use of market forces and reliance on price mechanisms to improve the economy had gained momentum, and there now existed a wide range of experience in possible mixes of government intervention and private competition.

4. The objective of defending competition, in particular by adopting RBP control legislation and setting up effective institutions to apply such legislation, was a well-established policy in practically all developed market-economy countries and in a rapidly growing number of developing countries. The same concern was also manifested in the large number of requests from developing countries for technical assistance through advisory missions and training services. Fortunately, a consensus on technical co-operation existed, and it was important to translate that consensus into a concrete programme of action. The Review Conference should be an occasion for States wishing to contribute to the effective implementation of the Set in this respect to make pledges of contributions, both financial and in the form of expertise. Providing assistance to those developing countries wishing to

develop domestic competition was one of the responsibilities of the international community in the context of restrictive business practices. The other was to contribute to more transparent and fair competition in international transactions.

5. With regard to secretariat document TD/B/RBP/69, he underlined the importance of making full use of the Set's provisions. Reinforcing the Set's applicability to international trade would require in particular that priority be given to information and transparency on one hand and to the definition of consultation procedures on the other. Concerning the issue of information and transparency, the existing possibilities under the Set had not yet been fully implemented. It was expected that, with further progress on legislation and technical assistance, countries from all regional groups would become better equipped and more willing to exchange information. While further steps in this respect could include the setting-up of domestic notification and registration procedures on RBPs affecting imports and exports, to be followed by notification of such information to all interested trading partners through the establishment of a centralized information exchange system, an intermediate step might involve the development of regional or subregional RBP information centres, in accordance with provision E.7 of the Set, where member countries of regional groupings of States or other arrangements would collect and exchange information on RBPs likely to adversely affect their trade and development.

6. With respect to the consultation procedures contained in provision 4 of section F of the Set, it would seem that developing countries would be in a better position to make effective use of those provisions once they were able to effectively detect, investigate and control RBPs adversely affecting their trade and development. For those countries where RBP legislation did not exist, it would be necessary first to implement provisions 1, 2 and 6 of section E of the Set and, as an intermediate step, at least to establish an "RBP focal point" competent to deal with RBP issues. For developing countries which already had RBP legislation, better co-ordination of the RBP control authority with the authorities responsible for external trade might be necessary.

7. It would also be useful to maintain a list of authorities empowered to lodge and receive requests for consultations. In the event of a consultation procedure not bringing relief to the affected party, some effective follow-up

procedure for relief might have to be established. Eventually, special efforts would need to be made in developed countries to discourage their firms from using RBPs in their transactions in developing countries and also to eliminate or reduce the effects of such practices.

8. The spokesman for the Group of 77 (Algeria) said that, in preparing for the Review Conference, the first task was to assess the application of the Set during the last 10 years, and it was clear from document TD/B/RBP/69 that the main objectives of the Set had not been achieved. Not only had RBPs continued to be used by enterprises, in a manner detrimental to the trade and development of developing countries, but also as tariff and non-tariff barriers in world trade were gradually dismantled, States relied on the freedom of action of their "champion" enterprises to defend and even improve their position on the international game board.

9. While healthy competition, as envisaged in the Set of Principles and Rules, was in no way reprehensible, it was unfortunate that in many cases the Set was not being implemented and that on the contrary States were closing their eyes to or even encouraging the use of certain RBPs by their national firms. In many countries, national legislation either authorized export agreements or omitted any mention of them, simply on the grounds that such legislation had no effect beyond the national frontiers. It was, however, paradoxical to see that in other cases, such as the taxation of businesses or the protection of so-called sensitive secrets, and in the transfer of technology, national laws were applied without any difficulty to the affiliates of transnational corporations. Moreover, examples of encouragement of the use of RBPs could be found in "voluntary export restraints" which were in effect simply international cartel agreements to apply quotas to trade at the enterprise level, and these were generally tacitly accepted by the Governments concerned.

10. With regard to the Uruguay Round of trade negotiations, in particular as it related to services, aspects of intellectual property rights related to trade (TRIPs) and trade related investment measures (TRIMs), the proposals by the developed countries in this regard were designed to condemn action by Governments to counteract certain RBPs of firms authorized to invest. He stressed in this connection that RBPs were applied to exchanges of both goods and services. On measures concerning TRIMs, the only means that host country Governments had to ensure that foreign companies avoided using RBPs was to

enforce their current legislation on foreign investment and particularly the requirements relating to local content, export performance, etc. What developed countries seemed to be asking for was the removal of all State measures so that their enterprises could be given absolute freedom of action. He stressed that RBPs were not only detrimental to the trade of the developing countries but were also harmful to the interests of the developed countries. The international press had recently given examples of practices used by companies determined to prevent international competition in their domestic construction market. If such infringements of the Set of Principles and Rules could occur to the detriment of the main trade partners, it was hard to imagine that competitors from small countries, or economically weaker countries, could receive any better treatment. His Group therefore attached importance to the improvement of the Set and particularly to strengthening its application.

11. To that end, the Group of 77 had submitted proposals which appeared in document TD/B/RBP/CRP.5. The first part of the proposals concerned specific improvements to the Set. In particular, the provisions of the Set should be made more precise in order to preclude any major escape clauses. For example, the proposal had been made to repeal the exemption contained in paragraph D.3 on enterprises that were part of the same economic entity, to delete the footnote to paragraph D.4 concerning acts in abuse of a dominant position, and to delete the expression "unduly" which often appeared in the provisions of the Set. In Section B, paragraph 9, it was important to specify that the exemption applied only to formal intergovernmental agreements and not to tacit agreements or other discretionary arrangements.

12. In view of the importance of the subject-matter, an UNCTAD Committee should be established so that discussions on RBPs could be conducted on the same footing as other subjects debated in UNCTAD and also so as to ensure better participation by experts from capitals. It was time to stop minimizing the importance of RBPs, particularly at a time when deregulation, privatization and the opening up of markets continually pointed to the growing need for the control of RBPs nationally and multilaterally.

13. The second aspect of the Group of 77 proposals concerned transparency. As international trade became more liberal, transparency with regard to trade barriers was likely to diminish, since whereas regulations, laws and other traditional obstacles to trade were notified to the appropriate organizations,

such as GATT, RBPs of enterprises were either secret by their very nature or not registered, and in no way did they form part of a central registration system. The proposal of the Group of 77 was designed to remedy this situation by placing all States - and their enterprises - on an equal footing.

14. The third section of the Group of 77 proposals was designed to improve and to develop the consultation procedure provided for in Section F of the Set. Those proposals derived directly from the Final Act of UNCTAD VII and should not give rise to major difficulties for the other regional groups. The third section also contained specific ideas which would put developing countries in a better position to detect RBPs originating abroad and to take the necessary remedial action. The Set of Principles and Rules, in section E, provided for a whole range of measures for co-operation and mutual assistance among States, and the proposals of the Group of 77 were therefore aimed at determining the procedure to be followed by countries having difficulties with RBPs.

15. The fourth section of the Group of 77 proposals, which also derived from the Final Act of UNCTAD VII, invited States to strengthen the effort for technical assistance, advisory and training activities on RBPs. This was one of the corner-stones of the Set of Principles and Rules. Indeed, the present trend towards liberalization and opening up of markets and "price realism" shed new light on the need to promote competition and consequently to control RBPs adversely affecting developing countries. The gradual move away from State monopolies, subsidized sectors and price regulations made it imperative that rules on competition should be adopted in an ever-increasing number of developing countries. Hence, these countries needed immediate technical assistance, and UNCTAD was the proper organization to co-ordinate and implement such technical assistance. Thus far, the efforts made had proven useful, but highly insufficient. The first stage would be to organize regional seminars to introduce the subject. Appropriate assistance, on request, would also be needed to assist the developing countries to draw up legislation and to train staff to implement it. That was why the Group of 77 once again wished to stress the importance it attached to the implementation of the technical assistance function provided for in the Set of Principles and Rules.

16. The fifth section of the Group of 77's proposals called for a Third United Nations Conference to Review All Aspects of the Set of Principles and Rules, to be convened by the General Assembly in 1995.

17. The spokesman for Group B (Netherlands) said that, as indicated in his Group's note to the Secretary-General of UNCTAD, contained in document TD/B/RBP/73, Group B had, after careful consideration, come to the conclusion that the Set as a whole did not need any textual changes. He noted that the Group of 77 and individual members of the Intergovernmental Group had made some proposals in documents TD/B/RBP/73 and TD/B/RBP/CRP.5, which had only just been received. His Group would respond to those proposals after they had had an opportunity to analyse them.

18. In Group B's note to the Secretary-General, they had already mentioned the fact that, in their opinion, the Set contained a satisfactory statement of sound competition rules and principles. These rules and principles had been applied continuously by members of Group B and with increasing effectiveness, as shown in the different annual reports prepared by the secretariat. Member States of other groups were also of the opinion that in a free market economy, the competitive process ensured the most efficient allocation of resources and contributed to consumer welfare. Competition policy aimed at protecting consumers and other participants in the market from anti-competitive conduct of enterprises and ensuring that market structures did not prevent effective competition.

19. In terms of its main concerns, the Set appeared to have stood the test of time, and that was remarkable given the changing economic conditions in the 1980s. Part of the strength of the Set was probably due to the balance achieved in the way it was formulated and accepted by all States. It was important that the balance should not be disturbed.

20. One of the main aims of the Set was to underline the need to introduce and enforce RBP legislation. Moreover, as the trend towards market-oriented policies was definitively going to continue, it was important to increase and improve technical assistance in the field of RBPs. Members of Group B had considerably stepped up their technical assistance in recent years, and Group B was prepared to examine how the Review Conference could assist in finding appropriate ways to respond to the growing demands for technical assistance, bearing in mind the budgetary constraints that all Governments faced.

21. In this respect, the annual meeting of experts within the framework of the Intergovernmental Group of Experts provided a forum for exchanging views, from which all participants could profit considerably. It was for this reason

that Group B reiterated their wish to provide for informal multilateral consultations during sessions of the Intergovernmental Group. The Review Conference should recognize the usefulness of such consultations during sessions and consequently recognize the need to make sufficient time available during sessions of the Intergovernmental Group to carry out such consultations.

22. The essence of the suggestions by the secretariat for the improvement and further development of the Set concerned the question of information and the question of consultation. Group B was of the opinion that the fundamental basis for information and consultation was the existence of national legislation for the control of RBPs. Only on that basis could the rules and principles in the Set regarding information and consultation be made truly effective. A second consideration of a general nature which would guide members of Group B would be that under the present circumstances - i.e. the rules and principles with regard to information and consultation had not been fully utilized - there was no justification for new information and consultation procedures, because the existing ones had not been shown to be defective. In the opinion of Group B, the main action to be undertaken was to guarantee that the exchange of information and appropriate consultations were being conducted in accordance with the Set. The preparatory session might contribute to realizing this aim by seeing where the technical implementation of these procedures might be improved.

23. The spokesman for Group D (German Democratic Republic) said that in the six months that had elapsed since the last session of the Intergovernmental Group of Experts, revolutionary changes had taken place in Eastern European countries. These changes related to the whole political, economic and social structure and were thus relevant to work on RBPs. While his Group's position on RBPs had been considerably modified, it had not completely changed, and as in the past, his Group was still in favour of controlling and eliminating RBPs. In the past, however, it had been assumed that no RBPs were applied by State-owned enterprises. That had at least been true with respect to internal transactions, where there had been no competition, and it had been largely true for the external relations of State-owned enterprises. At present, all Group D countries were engaged in introducing market-economy principles, which were based on competition and therefore introduced the risk of RBPs. It was therefore necessary to introduce or improve laws for the protection of competition. Administrative measures were losing their importance, since they

were no longer suitable or acceptable as a means of preventing monopolistic practices. Some countries, such as Hungary and Poland, had already enacted legislation to control monopolistic practices, while others, such as Bulgaria, the USSR and the German Democratic Republic, had taken the first steps and comprehensive measures were in preparation. The commitment of the countries of Group D to the Set was therefore about to be fulfilled in a different manner than before and in a manner more in line with the behaviour of the majority of countries.

24. In that connection, the model law on RBPs could make a useful contribution to the introduction or improvement of legislation.

25. Group D countries would welcome any experience and possible assistance in the field of legislation against monopolistic practices, and they would also be ready to share the experience they were gaining in the process of transition from a centrally-planned economy to a market economy and to provide technical assistance to developing countries, within the scope of their possibilities. One example of such technical assistance was a seminar on RBPs for Asian developing countries, which was planned to take place in Moscow in the autumn of 1990.

26. With regard to the text of the Set of Principles and Rules, his Group felt that the existing text was well balanced and that the Intergovernmental Group should avoid trying to change it.

27. The representative of China said that, since its adoption in 1980, the Set of Principles and Rules for the Control of RBPs had been implemented by different countries to varying degrees. Some had adopted legislation to control RBPs, while others had provided technical assistance to some countries. However, the objectives of the Set on the whole, especially those set out in Section A, paragraphs 1 and 4, had not been adequately implemented. Technical assistance, for instance, had been far from sufficient to meet the actual needs of developing countries, and developed countries had failed to honour their obligations as provided in the Set.

28. The Set of Principles and Rules was a meaningful document which recognized the adverse effects of RBPs, especially on the trade and development of developing countries, and the importance of controlling RBPs. Governments should voluntarily control RBPs having adverse effects on trade and development. The 10 years of implementation of the Set since its adoption had shown the need for the Set's further improvement. The proposals of the secretariat in that respect were positive.

29. The past 10 years of implementation of the Set had also coincided with China's opening and restructuring of its economy. China had made progress in controlling RBPs and in adopting relevant legislation. In the formulation of laws and regulations, a number of the rules and principles in the Set had been taken into account and embodied in the relevant regulations. The formulation of special legislation on the control of RBPs (Provisional Regulation on the Control of Unfair Competition) was under way.

30. Since the eighth session of the Intergovernmental Group, a conference on intellectual property rights had been held in China. He thanked UNDP for financing the Conference. He also thanked the UNCTAD secretariat, other international organizations, France and the Federal Republic of Germany for their technical assistance.

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Held at the Palais des Nations, Geneva,
from 23 to .. April 1990

Addendum

Rapporteur: Ms. Cecilia Barrios Barón (Argentina)

CONTENTS

Chapter		Paragraphs
I.	Preparations for the United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (agenda item 3)	31 - 61
II.	Organizational matters	62 - 69

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Chapter I

PREPARATIONS FOR THE UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(agenda item 3)

31. For its consideration of agenda item 3, the Intergovernmental Group of Experts had before it the following documentation:

"Comprehensive review of the implementation of the Set: note by the UNCTAD secretariat" (TD/B/RBP/69);

"Draft provisional rules of procedure of the Conference: prepared by the UNCTAD secretariat" (TD/B/RBP/70);

"Proposals for the improvement of the Set of Principles and Rules: note by the UNCTAD secretariat" (TD/B/RBP/73);

"Proposals for the improvement of the Set of Principles and Rules: note by the UNCTAD secretariat" (TD/B/RBP/CRP.5).

32. The spokesman for Group D (German Democratic Republic) said that an assessment of the 10-year application of the Set was difficult. In terms of political attitudes towards competition, when the Set had been drawn up, the majority of the countries of his Group had been of the opinion that central planning was the most effective way of conducting the economy, inter alia, since it avoided the waste generated by competition. History had, however, shown that central planning did not sufficiently stimulate individuals and collectives. Countries members of his Group were now introducing a number of market mechanisms, and their attitude was changing towards competition in general and towards the application of the Set. They now looked favourably at certain positive aspects of international competition.

33. His Group considered that the Set had achieved part of its aims. It had, however, some qualms about the problem of mergers. He recognized that the internationalization of production required large-scale production units, but the conditions under which mergers could be allowed had not yet been clearly established. He suggested that the Intergovernmental Group could well clarify that matter at its current session. A second consideration in the assessment of the Set was the unequal impact of competition on the various economies.

34. His Group did not consider it appropriate at the present time to strive for any textual changes in the Set. The proposals of the Group of 77 in that respect firstly envisaged technical improvements of minor importance, the inclusion of which would nevertheless reopen the discussion of the Set, secondly related in a few cases to economic targets which went beyond the Set and thirdly concerned long-standing differences of opinion where agreement seemed impossible and where efforts to achieve it would prevent results on other items. His Group was also of the opinion that the legal status of the Set should not be changed. The maximum outcome of the Review Conference should be an annex for amendment or interpretation of the Set, or alternatively a resolution to that effect.

35. As regards transparency and information, it was important to make a distinction between information concerning new legislation and information regarding the use of RBPs. His Group would welcome an information system on legislation following the model of GATT, as indicated in the secretariat paper, and the Secretariat handbook could serve as a basis for this. As to information on cases, the rules of the Set, in particular section E.9, had not achieved their intended effect. Some countries of his Group hoped that procedural rules could improve the situation, but such rules should be concerned with ad hoc information. The problem of a centralized information system should be studied, though the financial implications might be considerable.

36. In respect of consultations, the existing possibilities had not been fully used, the main reason being that no clear and substantiated cases had been brought to the attention of the national authorities competent to start such consultations. Because of lack of experience, some people confronted with RBPs were not equipped to detect them and inform their authorities, and it was therefore difficult for those authorities to ask the corresponding authorities in the countries where the RBPs originated to provide further information; it was mainly a matter of the affected countries developing new procedures to overcome the lack of information. In that connection, his Group had reservations about UNCTAD's recommendations on how countries should organize such information channels, for example via focal points. Some countries might be confronted with legal problems if information which was designed for a specific purpose was also utilized for other purposes. His Group would welcome the improvement of consultations procedures and supported the idea of carrying out a study in that respect.

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37. Section B.9 of the Set concerning intergovernmental agreements had originally been meant to give OPEC a preferred standing. However, in the meantime, other agreements had gained in importance, and the suggestion to reconsider this provision was understandable. A study on the matter should bring further clarification. The existing institutional framework for work on RBPs had proved to be sufficient, and an upgrading of the Intergovernmental Group would not lead to any spectacular results. Nevertheless, his Group would not object if the other groups thought such an upgrading necessary. Similarly, his Group had no objection to the holding of a Conference in 1995. Such a Conference should review the developments and situation in the field of RBPs and should not be limited to a revision or amendment of the text of the Set.

38. Finally, the problem of technical assistance needed to be solved by the Conference. His Group strongly supported measures in that field within the framework of existing budgetary possibilities and voluntary contributions. Discussions on that issue had taken place within the Intergovernmental Group and his Group therefore had no objection to its being covered in the final document of the Conference.

39. The representative of India said that the objectives of the Set were as relevant today as when the Set had been adopted 10 years previously. The Review Conference would enable the international community to take stock of the impact of the Set, which was the only international instrument existing in the field of RBP control, and to try and strengthen its provisions, as well as its implementation, at a time when one of the most far-reaching MTN rounds was approaching an end. In fact, RBPs not only had an effect on trade in goods but encompassed other vital areas of trade and development, namely services, capital flows and transfer of technology and know-how, which were also subjects under consideration in the Uruguay Round. Thus, the two processes of the Uruguay Round and the review of the Set were intertwined, in that genuine trade liberalization in the Uruguay Round would have to include strengthening of disciplines relating to RBP control.

40. The existence of the Set had not made any substantive difference to the manner and frequency with which enterprises had indulged in RBPs. On the contrary, RBPs adversely affecting international trade, especially the trade and development of developing countries, had not only persisted but had proliferated and assumed new and subtler forms, replacing governmental trade

barriers which had been meant to be dismantled. There was also a dichotomy between principles and practices, between what was considered reprehensible domestically and expedient internationally, and between "international competitiveness" which justified and encouraged RBPs on one hand and the requirement of genuine competition in international trade on the other. In this culture of "competitiveness", developing countries and their enterprises became particularly vulnerable, not only because they were unable to engage in the same game but also in terms of the higher price they had to pay for their imports of goods, capital and technology, as well as the lower returns they were able to get from their exports and from the expansion of their export trade.

41. Deregulation did not imply that States disavowed responsibility for the actions of their enterprises. On the contrary, deregulation had to be accompanied by a strengthening of RBP control legislation. Similarly, the global trend towards the market orientation of economies and a greater role for market forces and private enterprise implied that steps be taken to maintain the "integrity of the market" and to prevent distortions of the market which would not only have anti-competitive but also anti-welfare effects.

42. The picture was not completely bleak, however, since her country's experience with some enterprises had been heartening in that these enterprises did in fact observe their commitments under the Set, thus reinforcing the underlying philosophy of the Set that a balanced quest for profit did not necessitate the use of RBPs.

43. She described the many RBPs which her country had encountered in international trade transactions, the most frequent being the imposition by TNCs of export restriction clauses. Her country had a long tradition of controlling RBPs in trade, and the Monopolies and Restrictive Trade Practices Legislation (MRTP) had been conceived as an instrument for the promotion of economic and social justice. There were also a number of agencies and ministries focusing on the issue of RBP control in respect of both internal trade and international trade. However, mere maintenance of regulatory régimes for controlling RBPs in developing countries would not result in effective control unless the developed countries exercised restraint and control over the behaviour of their enterprises' action in other countries, especially developing countries. The selectivity that was seen in the

exercise of jurisdiction with regard to the foreign operations of national firms seemed to point to double standards, because on one hand if it suited the Government concerned, the latter imposed certain restraints and disciplines on its national firms operating in foreign countries, while claiming lack of jurisdiction in areas which adversely affected only foreign countries, especially developing ones. Moreover, the view that the developing countries themselves should adopt appropriate legislation and develop the necessary mechanisms for controlling RBPs of foreign firms on their soil did not take into account the low bargaining power of developing country Governments and enterprises, which therefore could not go beyond a certain point in disciplining foreign firms operating in their territory without the active co-operation of the Governments of the countries of origin of the enterprises.

44. Finally, the review process should attempt to do the following: (a) improve and strengthen the Set itself, through the necessary amendments, so that a clearer, more development-oriented and binding multilateral instrument emerged from the process; (b) evolve mechanisms for better implementation of the Set through the imparting of transparency and further evolution of consultation procedures; (c) act as an occasion for the expression on the political will of all concerned to implement the Set in letter and in spirit; and (d) galvanize funding support for UNCTAD's technical support programmes on RBPs.

45. The representative of the Union of Soviet Socialist Republics stressed the considerable significance of UNCTAD's work in the area of RBPs, in particular in the light of the radical economic reforms that were taking place in his country, including efforts to promote enterprises, to set up credit, finance and tax systems, to enhance competition among enterprises and to decentralize foreign trade operations. His country was therefore keen to participate in the efforts to improve the effective application and implementation of the Set.

46. Evaluating the application and implementation of the Set was not a simple exercise. While a growing number of countries had adopted RBP legislation or were in the process of adopting RBP control legislation - as was the case of the USSR - it was necessary to realize that no tangible progress had been made in achieving the main objectives of the Set. As noted by the secretariat in document TD/B/RBP/69, during the last decade objectives 1 and 4 of the Set had

not been met, and the number of voluntary export restraints and orderly marketing arrangements receiving explicit or tacit government approval had increased. In addition, there had been a considerable increase in the concentration of market power through mergers and take-overs.

47. His delegation considered that a revision of the text of the Set was not appropriate at the present time, as reopening the Set ran the danger of unwinding the existing balanced agreement. Moreover, it was not desirable to provide the Set with mandatory power. While the adoption of national RBP legislation was considered to be important, such legislation was often not sufficient to come to grips with practices originating from abroad, especially when other Governments permitted their enterprises to use RBPs as a means of strengthening their position in international trade. In order to control RBPs effectively, there was a need to combine the application of national legislation with international co-operation. The real basis for such co-operation was the exchange of information and intergovernmental consultations. While at present the situation with respect to exchange of information was unsatisfactory, his delegation supported the proposal to establish a centralized registry on RBPs in UNCTAD, open to any State upon request.

48. Technical assistance, combined with improved exchange of information and consultations, was necessary for the control of RBPs. Technical assistance programmes should be strengthened by increasing resources from voluntary contributions from States, as well as by UNDP funding.

49. The representative of the German Democratic Republic said that his country was currently introducing fundamental changes in its political, economic and social system. The new Government had declared that the transition from State planning to a social market economy should be implemented rapidly but in an appropriately phased way. Competition was regarded as the most important regulatory element of the market economy, and the adoption of corresponding institutional and legislative measures had therefore become inevitable. The Council of Ministers had already adopted decisions on the creation of an Office for the Protection of Competition and on measures for the preparation of a Law against Restraints of Competition on 22 March 1990, and the Office in question had already started working.

50. Those measures were part of a broad range of legislative activities relating to the introduction of the market economy. In the field the Intergovernmental Group was engaged in, such activities were primarily directed at incorporating most of the provisions of the Act against Restraints of Competition (ARC) of the Federal Republic of Germany. Only paragraphs 24-24 (c) of the ARC relating to preventive merger control had been replaced by more flexible rules which allowed adaptation during a transitional period. In addition, another law would be enacted on general freedom of pricing. Only the prices for a few socially highly sensitive goods or services such as rents, energy, transport and postal services would continue to be covered by price regulations.

51. The Office for the Protection of Competition was empowered to make recommendations with respect to the authorization of joint ventures which might impair competition. Once the corresponding legislation had been passed, the Office would have the power to act on its own responsibility. The draft law for the introduction and adaptation of the Act against Restraints of Competition made it possible to prohibit joint ventures established as from 23 January 1990, the date from which joint ventures had been allowed, if they proved to be anti-competitive. All this was evidence that his country was now well on its way to fulfilling its commitments under the Set of Principles and Rules by introducing appropriate legislation.

52. The representative of Sri Lanka said that his country had made four proposals for amending the Set, which were set out in document TD/B/RBP/73. First, in section A, a new item "Stimulation of investment and economic growth" should be added to paragraph 2, the reason being that greater efficiency in international trade and development could not be achieved unless there were competition laws that stimulated investment. In that connection, the new industrial policy statement of the Government of Sri Lanka was intended to stimulate both local and foreign investment. Action was to be taken to set up new financial institutions and instruments to mobilize and enhance local and foreign investment capital.

53. Secondly, in section C, paragraph 7, a new item (c) should be included to read "providing greater employment and income opportunities for their under-utilized and unutilized work force". Most developing countries were grappling with the problem of substantial unemployment, and the differential treatment accorded to developing countries should take that reality into consideration.

54. Thirdly, in section E the wording of paragraph 6 should be amended as suggested in document TD/B/RBP/73. Even in developed countries like the United Kingdom, competition authorities had experienced great difficulty in obtaining certain vital information, and the competition authorities in developing countries like Sri Lanka would obviously be even more handicapped in their efforts to obtain information from multinationals. It was therefore suggested that where the activities of parent multinationals were known to the Governments of countries in which they were located, that information should be transmitted, on request, to the competition authorities of developing countries which needed this help to control the activities of the multinational enterprises concerned.

55. Finally, under section G, the present formulation of items 3 (b) and (c) enabled UNCTAD only to commission and consider studies from the relevant organizations in the United Nations system. His country's proposal was intended to enable UNCTAD to commission and to disseminate studies from experts the world over.

56. The representative of Romania said that during the past 10 years of application of the Set, the fundamental objectives of the Set had not been attained. RBPs continued to exist, adversely affecting the trade and development of developing countries. For that reason, his delegation supported the adoption, at the Review Conference, of practical measures aimed at improving the Set and reinforcing its application.

57. Romania, which was a developing country member of the Group of 77, was now involved in a transition towards a market economy based on competition and was studying the possibility of introducing national legislation on RBPs. Consequently, it was also interested in benefiting from technical assistance from UNCTAD in that field, and the Review Conference should devote particular attention to the need for increased resources to carry out technical assistance programmes. International organizations and financing bodies, such as UNDP, should be invited to provide increased financial and other contributions to reinforce UNCTAD's technical assistance activities. He suggested that the Review Conference should adopt a detailed plan of technical assistance measures and provide, among other things, for continuation of the work on the handbook on RBP legislation and on the model law or laws on RBPs.

58. The representative of the Philippines said that the general impression that seemed to emerge from some statements that had been made was that there was no need for amendments or for a general revision of the Set of Principles and Rules, because the Set represented a satisfactory statement of sound competition principles and rules. Even if that was the case, his delegation took the view that the Set in its present form and formulation needed to be strengthened and to be given some binding force and effect. It did not seem equitable that there should be a continuous and increasing trend towards liberalization of trade in goods and services in GATT, while there was no progress towards the adoption of a code of conduct for transnational corporations in the Commission on Transnational Corporations or towards a general revision of the Set of Principles and Rules in UNCTAD. If markets were to be opened and liberalized, the players in those markets should be subject to certain rules of conduct, which the international community should be willing to adopt.

59. The representative of Indonesia said that one of the main objectives of the Set was to ensure that RBPs did not impede or negate the realization of benefits that would arise from the liberalization of tariff and non-tariff barriers affecting world trade, particularly those affecting the trade and development of developing countries. However, concerns about the continued existence of RBPs adversely affecting international trade, particularly the trade and development of developing countries, had been expressed repeatedly. There was, therefore, an urgent need to ensure that efforts and progress in reducing the impact of governmental intervention measures such as tariff and non-tariff barriers would not result in the introduction or intensification of restrictive measures applied by enterprises.

60. Practically all developed market-economy countries had RBP control legislation and institutions, and the necessity of having appropriate legislation and institutions was also being recognized by a growing number of developing countries. However, in order to establish the necessary measures and institutions, developing countries would need technical assistance, advisory missions and training services. He hoped that a consensus on the need to increase technical assistance and co-operation would be translated into a concrete programme of action.

61. At the Intergovernmental Group's 3rd plenary meeting, on 24 April 1990, the spokesman for the Group of 77 (Algeria) introduced draft decision TD/B/RBP/L.50 on behalf of the States members of the Group of 77.

Chapter II

ORGANIZATIONAL MATTERS

A. Opening of the session

62. The ninth session of the Intergovernmental Group of Experts was opened on 23 April 1990 by Mr. Ricardo Guerra de Araújo (Brazil), Vice-Chairman of the Group at its eighth session.

B. Election of officers

(agenda item 1)

63. At the 1st plenary meeting of its ninth session, on 23 April 1990, the Intergovernmental Group elected the following Bureau:

Chairman: Mr. Eric Sahlin (Sweden)

Vice-Chairmen: Mr. Abdeljebbar Brahime (Morocco)
Mr. Mohammed Talukdar (Bangladesh)
Mr. Gonzalo Santos (Philippines)
Mr. Edward Hand (United States of America)
Mr. V.A. Kourshinov (Union of Soviet Socialist Republics)

Rapporteur: Ms. Cecilia Barrios Barón (Argentina).

C. Adoption of the agenda and organization of work

(agenda item 2)

64. Also at its 1st plenary meeting, the Intergovernmental Group adopted its provisional agenda (TD/B/RBP/68), as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. Preparations for the United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:
   (a) Review of 10 years of application and implementation of the Set
   (b) Formulation of proposals for the improvement and further development of the Set of Principles and Rules
   (c) Provisional agenda for the Conference
   (d) Provisional rules of procedure for the Conference
4. Other business
5. Adoption of the report of the Intergovernmental Group of Experts.

D. Membership and attendance

65. The following States members of UNCTAD participated in the session: Algeria; Angola; Argentina; Australia; Bangladesh; Belgium; Bolivia; Brazil; Bulgaria; Canada; Chile; China; Côte d'Ivoire; Cuba; Czechoslovakia; Democratic People's Republic of Korea; Ecuador; Egypt; Ethiopia; Finland; France; German Democratic Republic; Germany, Federal Republic of; Ghana; Greece; Guatemala; Honduras; Hungary; India; Indonesia; Iran (Islamic Republic of); Iraq; Ireland; Italy; Japan; Kenya; Kuwait; Lebanon; Madagascar; Mexico; Morocco; Netherlands; Nigeria; Norway; Panama; Philippines; Poland; Portugal; Qatar; Republic of Korea; Romania; Saudi Arabia; Spain; Sri Lanka; Sudan; Sweden; Switzerland; Thailand; Tunisia; Turkey; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; United States of America; Venezuela; Yugoslavia; Zambia; Zimbabwe. The European Economic Community was also represented.

66. The United Nations Development Programme was represented at the session.

67. The following specialized and related agencies were represented at the session: International Monetary Fund; World Intellectual Property Organization; United Nations Industrial Development Organization. The General Agreement on Tariffs and Trade was also represented.

68. The following intergovernmental organizations were represented at the session: League of Arab States; Organisation for Economic Co-operation and Development.

69. The following non-governmental organization was represented at the session: General Category: International Bar Association.

E. Adoption of the report of the Intergovernmental Group of Experts

(agenda item 5)

(To be completed)

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DRAFT REPORT OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES ON ITS NINTH SESSION

Held at the Palais des Nations, Geneva,
from 23 to .. April 1990

Addendum

Rapporteur: Ms. Cecilia Barrios Barón (Argentina)

CONTENTS

Chapter		Paragraphs
I.	Preparations for the United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (agenda item 3)	70 - 90

GE.90-51204/6133A

Chapter I (continued)

PREPARATIONS FOR THE UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(agenda item 3)

70. The spokesman for Group B (Netherlands), referring to the review of the application and implementation of the Set, said that, with respect to Section A of the Set, the objectives of the Set had proven to be well balanced and a good basis for promoting the control of RBPs in international trade. Even so, the aim of completely eliminating RBPs was an ongoing process that would probably never be fully achieved. It was therefore understandable that not all countries were satisfied with the achievements attained so far, but the best way to fulfil the objectives of the Set was to introduce and implement national RBP legislation. He drew attention to the encouraging fact that many Group B and other member States had introduced or strengthened such legislation. It was hoped that the Review Conference would further encourage such a process.

71. With reference to Section B of the Set, the provisions covered acts or behaviour of enterprises and not actions by Governments acting in their governmental capacity. The Set explicitly stated in section B.9, that "it shall not apply to intergovernmental agreements, nor to restrictive business practices directly caused by such agreements". The Set itself intentionally contained no definition of intergovernmental agreements. Trade policy issues were appropriately dealt with in other forums, especially in GATT. However, the Set clearly excluded purely intergovernmental trade policy agreements, clearly included purely private agreements, and required that agreements that were neither purely intergovernmental nor purely private be evaluated on a case-by-case basis.

72. On Section D of the Set, the description of sections D.3 and D.4 in paragraph 38 of the secretariat note somewhat overstated the coverage of those provisions. These sections taken together covered some transactions between affiliated enterprises in appropriate circumstances but not all such transactions.

73. Moreover, the reference to the Export Trading Company Act of the United States, in paragraph 43 of the note, could give the misleading impression that this legislation provided some form of antitrust immunity outside the United States. That was not the case.

74. With respect to Section E of the Set, paragraph 51 of the secretariat's note could leave the erroneous impression that the Set was binding, whereas it expressly took the form of recommendations.

75. With regard to Section F of the Set, Group B supported the idea of further work on the handbook and on the model law or laws. Second, attention should be paid to the fact that the Set called on both States and UNCTAD to provide developing countries with technical assistance in the field of RBPs. The assistance provided had grown considerably in the second half of the 1980s, and this was clearly a positive development, though his Group was aware of the need for further expansion in RBP technical assistance.

76. Concerning Section G of the Set, he underlined the important functions performed by the Intergovernmental Group and, in particular, the very constructive role played by informal consultations at a number of its sessions in allowing substantive matters of competition policy to be discussed.

77. With regard to the suggestions made for amending the Set, Group B had concluded that the text of the Set should not be changed. Concerning firstly the Group of 77's proposal to amend the Set by removing the word "unduly" from the various provisions of the Set that identified which private business practices could properly be said to be anti-competitive "restrictive business practices", that would fundamentally alter the substantive balance of the Set by branding some business practices as always anti-competitive (including horizontal ones), regardless of whether they were anti-competitive or not. The need to evaluate the competitive consequences of particular business conduct was not an "escape clause", as argued by the Group of 77, but the essence of sound RBP control. Group B could not agree to changing the Set to render such an evaluation irrelevant.

78. Second, the Group of 77 proposal to amend section C.7 of the Set to require developed countries to ensure that firms based in such countries did not commit RBPs in developing countries would be impractical, because while the RBP control laws of individual developed countries permitted them to deal with RBPs having effects on their domestic markets, constitutional and international law constraints prevented them from covering conduct that had no effect on their markets. This basic concept was not, as the Group of 77 had suggested, limited to RBP control legislation but applied also to tax and technology transfer laws. In addition, RBP control authorities in Group B countries rarely, if ever, had information about particular conduct having no

effect on their domestic markets, even when such conduct was carried out by firms based in the Group B State. Finally, the RBP control authority of one country could not be expected to make fully informed and sound judgements about the actual competitive impact of business conduct in foreign markets.

79. Third, the Group of 77's proposal to amend sections D.3 and D.4 by deleting those provisions of the Set that dealt with intra-enterprise activity would result in the Set always treating different parts of the same firm or affiliated firms as wholly independent economic actors. The proposal would undermine one of the most carefully balanced portions of the Set, and ignore the basic teaching of the Set that competition analysis should deal on a case-by-case basis with economic facts and not treat a single economic entity as two or three separate enterprises.

80. Fourth, the Group of 77's proposal that section B.9 of the Set be amended to exclude from the scope of the Set "formal" intergovernmental agreements, but not other types of intergovernmental agreements or RBPs "directly caused by such agreements", and the secretariat's suggestion that the Review Conference should clarify the application of the Set to VERs and OMAs were not acceptable to Group B. The language of the Set provided clear guidance with regard to its application to intergovernmental agreements and the results thereof. For example, VERs such as the textile and steel agreements were clearly intergovernmental agreements not covered by the Set, while wholly private cartel conduct, such as anti-competitive secret export cartels, were clearly RBPs covered by the Set and could not properly be said to be VERs or OMAs. The current wording of section B.9 preserved the crucial distinction between RBPs which were covered by the Set and government trade policy which was covered by GATT.

81. Fifth, his Group could not agree with the Group of 77's proposal to amend Section G of the Set to replace the Intergovernmental Group with a special committee. The General Assembly had created the Intergovernmental Group as an expert body, and to set up a special committee in order to "create the necessary political will" could unduly politicize the forum. Such a change could also obscure the crucial distinction made in the Set between RBP control issues and trade issues that lay outside the bounds of the Set.

82. Sixth, with regard to the proposal that developed countries should create public registries of RBPs affecting international trade, and provide that data to other States and to the secretariat, Group B would welcome the opportunity

to identify competent RBP control authorities that could provide a wide range of publicly available information about RBP control matters. Indeed, the current provisions of the Set made it easy for other States to learn about RBPs identified by Group B authorities. However, a public RBP registry could not practicably be implemented with respect to the vast bulk of business conduct, whose competitive effects had to be evaluated on a case-by-case basis. Such a public registry could violate fundamental rights against self-incrimination, contravene confidentiality requirements, ignore the legal inability of States to regulate RBPs not affecting their domestic markets, and be ineffective in obtaining information about secret and truly anti-competitive cartel behaviour.

83. Seventh, the Group of 77 had proposed that the consultations procedure in section F.4 be "improved and developed" by setting up RBP focal points and a mandatory procedure for "meaningful consultation" and dispute settlement among Governments on RBP issues, with secretariat participation. Group B itself had proposed (in TD/B/RBP/73) that the Review Conference should recognize the utility of multilateral informal consultations on matters of substance relating to RBP control among experts during Intergovernmental Group sessions and that the Conference should provide improved mechanisms for such consultations at future sessions. Group B also would encourage the dissemination of information about contact points in the RBP control authorities of developed and developing countries. However, no justification had been shown for replacing the Set's consultation procedures with the complex and mandatory consultation régime proposed by the Group of 77. While the Set's current procedures had rarely if ever been invoked by a developing country, the secretariat had not been able to identify any flaws in the current procedures that would make them difficult to use. The experience of Group B countries was that the analagous OECD consultation system had worked well and had often been used, even if mostly on a bilateral basis. Bilateral consultations were often the most effective way of dealing with RBP control issues. If, as the secretariat suggested, the lack of use of the Set's consultation procedures was in large part attributable to the fact that many States had not enacted RBP control laws, the obvious remedy was to enact such laws. In that context, Group B saw considerable scope for using the Intergovernmental Group to discuss the introduction and enforcement of national RBP legislation.

84. With regard to technical assistance, Group B recognized the increasing importance of technical assistance in the area of RBPs, and Group B members had now established this activity and were ready to further develop their involvement in bilateral and multilateral technical assistance, subject to the availability of resources. Group B attached importance to the role of UNDP as a source of funds in appropriate cases, and the UNCTAD secretariat could provide an overview of technical assistance requests which had been made so far.

85. The representative of China said that the Set had played a positive role in urging countries to formulate and enforce legislation against RBPs. However, discussions on some provisions in the Set which were controversial or had not been fully implemented were necessary so that the Set could be improved and further developed.

86. Concerning Section B, paragraph 9, of the Set, there was now a divergence regarding the applicability of this provision, and this had directly affected the assessment of the implementation of the Set as a whole. In his view, the text of paragraph B.9 of the Set was not intended to encourage RBPs through intergovernmental agreements. No country committed to controlling RBPs could invoke this provision as justifying the encouragement of RBPs. If that happened, RBPs would become uncontrollable, and the Set would have lost its entire raison d'être.

87. With regard to the internal transactions of transnational corporations, in recent years many enterprises, including TNCs, had made use of RBPs adversely affecting international trade. Such RBPs, including those used in the intra-firm transactions of TNCs, had seriously damaged the trade of developing countries. The calls to amend paragraph D.3 of the Set therefore merited serious consideration. The objectives and the rules of the Set were closely related and could not be regarded separately, and it was clear from objective A.4 and the other provisions in Section D that the exemption of intra-firm transactions in D.3 was not meant to be an excuse for condoning the use of RBPs by TNCs in their internal transactions. If the practices between the branch enterprises of a TNC ran counter to the established objectives of the Set, or if they constituted "an abuse or acquisition and abuse of a dominant position of market power" as stipulated in D.4, they obviously would be subject to control. The question of controlling RBPs in the internal transactions of TNCs was still a new subject to the international community,

and controversy still existed with regard to such questions as the scope of control. As many host countries still lacked the relevant legislation and experience, he hoped that the UNCTAD secretariat would conduct a special study on RBPs in intra-firm transactions of TNCs, including the damage they cause to the trade and development of the host countries, and on the legislation and experiences of countries in this regard.

88. The representative of Bulgaria said extremely important changes were taking place in Eastern Europe, including his country. There was therefore an increasing need for consultations at both the bilateral and the multilateral level, especially as far as his country was concerned, since it was drafting a Law on Unfair Competition. In that connection, his country was ready to share its experience concerning the transition from central planning to a market economy.

89. As regards the proposals to revise a number of provisions of the Set, there was indeed a need to set up a central registry open for consultation by any State, as well as to ensure transparency. The Set, however, was a well-balanced document adopted on the basis of consensus, and any revision of its provisions could lead to a distortion of the focus of the Intergovernmental Group's work. What was needed was to ensure that the provisions of the Set were more closely observed. It would, of course, be advisable to continue the work on the model law or laws on RBPs. As regards the proposal to replace the Intergovernmental Group with a special committee, this might involve extra cost, which was undesirable. In addition, discussions on this proposal might deflect the attention of the Intergovernmental Group from problems requiring immediate attention.

90. At the Intergovernmental Group's 4th plenary meeting, on 25 April 1990, the spokesman for Group B (Netherlands) introduced draft recommendations to the Review Conference, on behalf of the States members of Group B (TD/B/RBP/L.51).

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PREPARATIONS FOR THE UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF THE MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Draft decision submitted by Algeria on behalf of the States members of the Group of 77

The Intergovernmental Group of Experts on Restrictive Business Practices,

Recalling the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices ("the Set") adopted by the General Assembly in its resolution of 5 December 1980,

Recalling further the agreement in the Final Act of the seventh session of the United Nations Conference on Trade and Development, paragraph 105 (18), to continue and strengthen the ongoing work in UNCTAD in respect of restrictive business practices, particularly with a view to ensuring transparency and to defining consultation procedures, and to continue the UNCTAD technical assistance programme in the field of restrictive business practices,

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Recalling the decision by General Assembly resolution 41/167 to convene in 1990, a United Nations Conference to Review all Aspects of the Set of Principles and Rules for which the Intergovernmental Group of Experts was to serve as preparatory body at its ninth session,

Having considered the operation and experience arising from the application and implementation of the Set,

1. Expresses its concern at the continued existence of restrictive business practices adversely affecting international trade, particularly the trade and development of developing countries, 10 years after the unanimous adoption of the Set;

2. Agrees to propose to the United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:

(a) That it adopt the following amendments to the provisions of the Set: [Part I of the Group of 77 proposals contained in document TD/B/RBP/CRP.5];

(b) That it take appropriate steps to ensure transparency with respect to restrictive business practices adversely affecting international trade and, in particular, the trade of the developing countries and their economic development;

(c) That it define consultation procedures which would enable developing countries to make the appropriate requests and obtain relief and remedial action with regard to restrictive business practices originating abroad which adversely affect their trade and development;

(d) That it adopt a detailed plan of action of technical assistance measures, advisory services and training in the field of restrictive business practices;

(e) That it recommend to the General Assembly the establishment of a special commission under the auspices of UNCTAD with the task of supervising the application and implementation of the Set and of seeking practical ways of facilitating multilateral co-operation for the exchange of information and experience concerning the control of restrictive business practices which hamper international trade and particularly the trade of the developing countries;

(f) That it also recommend to the General Assembly the convening of a third United Nations conference in 1995 to review all aspects of the revised set of principles and rules;

3. Requests, therefore, the Secretary-General of UNCTAD to prepare, in order to facilitate the work of the Review Conference:

(a) A report containing detailed proposals for: (i) the improvement of transparency in matters of restrictive business practices, and (ii) the definition of consultation procedures to identify the appropriate corrective or preventive measures;

(b) A detailed and quantified programme of the technical assistance needed with regard to RBP so that the Conference can make an accurate assessment of requirements in that area, request the competent international organizations and financing programmes, particularly UNDP, to supply the necessary resources and invite interested countries, particularly the developed countries, to participate in the programme by making voluntary contributions, financial or otherwise, or by offering free of charge to the programme in question the services of experts in restrictive business practices.

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PREPARATIONS FOR THE UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Draft Recommendations to the Review Conference proposed by the Netherlands on behalf of the States members of Group B

I. Technical Assistance

1. The Intergovernmental Group of Experts(IGE) recognises the increasing importance of technical assistance in the area of RBP control and that this is an activity that should develop and continue, taking account of the budgetary constraints faced by all governments; recognises that in carrying out technical assistance, flexibility is a key notion in order to achieve a maximum of results and a minimum of errors; notes that these efforts could be financed, where appropriate, by UNCTAD, the UNDP or by voluntary contributions from member States and recognises the need to improve communications between the developed and the developing countries. Accordingly, the IGE recommends that the Review Conference consider:

(a) That both multilateral and bilateral technical assistance on RBP control issues should be encouraged, as these may be complementary depending on the situation in the individual country concerned;

(b) That the UNCTAD secretariat should provide their good offices to facilitate channels of information between developing countries requesting assistance and developed countries willing to provide such assistance.

2. In order to ensure the efficient use of resources, the IGE requests the secretariat to prepare a report on technical assistance on RBP control issues. The report should include:

(i) A descriptive review of the technical assistance already carried out and its costs, specified on an individual programme basis;

(ii) A report on whether national legislation has been introduced, amended or enforced as a consequence of technical assistance;

(iii) A list of the requests for technical assistance made so far.

II. Information and Consultation

3. The IGE notes with approval that the number of countries which have adopted RBP legislation during recent years or are in the process of adopting such laws has increased considerably; notes that the proper enforcement of such laws without relevant information is not possible and therefore the need for information concerning RBP control will be likely to increase; notes that such information is sometimes located abroad; and recognises the need for provisions for the collection of such information and consultation. Accordingly, the IGE recommends that States should, with regard to information and consultation, take full advantage of the existing provisions already contained in the Set (as in C.3, C.4, E.9 and F.4).

4. The IGE therefore requests the UNCTAD secretariat to prepare for the use of the Review Conference a compilation of the different categories of publicly available information concerning RBPs already existing in Member countries, including a list of the respective RBP control authorities and channels through which such information is obtainable.

5. The IGE further requests the UNCTAD secretariat to identify for the use of the Review Conference elements that might assist member States, especially developing countries, to address requests for information concerning RBP control to other States, and how to enter into and hold consultations on RBP control issues in accordance with the provisions of the Set.

III. Informal Consultations and Exchanges of Views

6. The IGE recommends that the Review Conference recognise the utility of the multilateral informal consultations and exchanges that have occurred at several IGE sessions. The IGE recommends in particular that:

(a) At its future sessions, it should provide improved mechanisms for informal discussions and exchanges of views among experts, pursuant to sections C. 4 and G. 3 of the Set;

(b) Every session of the IGE should provide for at least two such meetings, each devoted to a subject of practical importance to restrictive business practices experts, each meeting consisting of short volunteered presentations by several experts, followed by comments, questions and further exchanges of views, the subjects to be chosen well in advance of the meeting; and,

c) The subjects for these informal consultations at the tenth session of the Group should be selected by the Conference in discussions among all Groups.

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PREPARATIONS FOR THE UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Draft Agreed Conclusions submitted by the Chairman

1. The General Assembly, in its resolution 41/167, decided to convene, in 1990, under the auspices of UNCTAD, a United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. It also decided that the Intergovernmental Group of Experts on Restrictive Business Practices, at its ninth session, should serve as the preparatory body for that Conference.

2. At its ninth session, the Intergovernmental Group of Experts had before it the UNCTAD secretariat report entitled "Comprehensive review of the implementation of the Set" (TD/B/RBP/69) and proposals by regional Groups and individual States (as contained in TD/B/RBP/73 and TD/B/RBP/CRP.5).

3. The Intergovernmental Group f Experts agreed to recommend to the Review Conference to adopt:

(i) The draft provisional agenda contained in document TD/B/RBP/L.53;

(ii) The draft provisisonal rules of procedure contained in document TD/B/RBP/70, as amended.

4. The Intergovernmental Group of Experts had a full exchange of views on the various proposals and agreed to recommend that the Review Conference consider these proposals, on the basis of the draft decision of the Group of 77, as contained in document TD/B/RBP/L.50 and the draft recommendations of Group B, as contained in document TD/B/RBP/L.51.

5. The Intergovernmental Group of Experts requested the UNCTAD secretariat to prepare, for the use of the Review Conference:

(a) A report containing detailed proposals enhancing the implementation of the provisions of the Set so as to ensure transparency in matters of restrictive business practices, including a compilation of the different categories of publicly available information concerning RBPs already existing in member countries, including a list of the respective RBP control authorities and channels through which such information is obtainable;

(b) With a view to contributing to the implementation of the agreement reached under paragraph 105 (18) of the Final Act of UNCTAD VII, a report containing detailed proposals for the definition of consultation procedures including by identifying elements that might assist member States, especially the developing countries, to address requests for, and receive information and co-operation concerning RBP control to and from other States, [and how to enter into and hold consultations on RBP control issues] in accordance with the provisions of the Set; and

(c) So that the Conference can make an accurate assessment of requirements in this respect, a report on technical assistance on RBP control issues in order to ensure the efficient use of resources, which should include:

(i) A descriptive review of technical assistance already carried out, its contribution to the control of RBPs and its costs, specified on an individual programme basis;

(ii) A list of the requests for technical assistance made so far; and

(iii) Based on the foregoing, proposals for a framework for a technical assistance programme that in the secretariat's view is needed with regard to RBP control.

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PREPARATIONS FOR THE UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

PROVISIONAL AGENDA FOR THE CONFERENCE

Draft provisional agenda submitted by the UNCTAD secretariat

1. Opening of the Conference
2. Election of the President
3. Adoption of the rules of procedure
4. Adoption of the agenda
5. Organization of the work of the Conference
6. Election of other officers
7. Credentials: (a) Appointment of a Credentials Committee;
   (b) Report of the Credentials Committee
8. Review of all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practises:
   (a) Review of ten years of application and implementation of the Set;
   (b) Consideration of proposals for the improvement and further development of the Set, including international co-operation in the field of control of restrictive business practices
9. Other business
10. Adoption of proposals for the improvement and further development of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restricitve Business Practises, including international co-operation in the field of control of restrictive business practices
11. Adoption of the report of the Conference